IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2233 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI DHARAMSINHBHAI BORICHA

Versus

STATE OF GUJARAT

Appearance:

MR DC DAVE for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner having an authorization for running a fair price shop has challenged the orders dated 4.2.2000 (Annexure "J") and 18.3.2000 (Annexure "K") permitting the ration card holders in village Chogath, Taluka Umrala, District Bhavnagar to purchase articles from the fair price shop of their choice out of three

fair price shops in the village.

2. The petitioner's grievance is that because he belongs to a Scheduled Case, the persons from Koli community do not want to purchase the articles from his shop and, therefore, the impugned orders amount to practicing untouchability of sort because the persons of Koli community have decided to boycott the petitioner. Reliance is also placed on the complaint filed by the petitioner against certain persons of the Koli community on 25.12.1999.

3. In response to the Rule and Notice as to interim relief issued by this Court, the Mamlatdar, Umrala has filed affidavit in reply denying the allegations and submitting that the petitioner had started his fair price shop from July, 1996 and without any disturbance upto December, 1999 the petitioner was running the shop and that there was no complaint against the petitioner from the village people since last about three and half years till December, 1999. The representation dated 4.1.2000 was received from the villagers of Chogat making complaint against the petitioner and his behaviour and expressing their apprehension that if any of the card holders will ask for any article, then they are likely to involved by the petitioner in the atrocity case. Alongwith the representation all the signatories submitted their ration cards with the office of the Mamlatdar. It was in order to sort out the problem and to ease the situation in the village that the impugned decision was taken to permit the village people to purchase articles from any of the three fair price shops in the village. It is further submitted that the petitioner has an alternative remedy of preferring an appeal before the Collector or revision before the State Government. The Mamlatdar has further stated in the reply affidavit that this whole incident was informed by him to the District Collector and called the petitioner and other officers to resolve the problem. The petitioner agreed to that and 584 card holders shall be permitted to get their things from any shop out of three fair price shops including the shop of the petitioner. The petitioner agreed to that. The Collector cancelled the orders passed by the Mamlatdar and passed a fresh order on 3.2.2000 and it was ordered by the District Supply Officer that 584 card holders can purchase their essential articles from any of the shops which are situated in village Chogath.

4. At the hearing of this petition, Mr Dhaval Dave, learned counsel for the petitioner submitted that the

impugned orders deserve to be quashed and the respondents are required to be directed to restore all the 485 cards to the petitioner's shop; otherwise, the petitioner will not be able to do any viable business and that the members of the dominating community will continue to boycott the petitioner's shop which will amount to encourage persons practicing untouchability. It is further submitted that in para 10 of the reply affidavit, the Mamlatdar has stated that he had informed the District Collector and called the petitioner and other officers to resolve the problem. It is further stated that the petitioner had not agreed to the ration card holders being permitted to purchase articles from the shop of their choice out of the three fair price shops in the village. It is also submitted that since the Mamlatdar or the District Supply Officer has passed the impugned orders under the instructions of the District Collector, the petitioner will not have an equally efficacious alternative remedy by preferring an appeal before the same officer i.e. the Collector.

5. Mr KT Dave, learned AGP has opposed the petition and has submitted that it is for the administration to decide as to which card holder should be permitted to purchase articles from which fair price shop and that the petitioner has no legal right more particularly when none of the 584 card holders are restrained from approaching the petitioner's shop and are granted liberty to purchase articles from the fair price shop of their choice in the village.

6. Having heard the learned counsel for the parties, this Court is of the view that in the facts and circumstances of this case, it will be most appropriate if the petitioner prefers an appeal/representation before the District Collector who will be the best authority to resolve the problem. Apart from the fact that he is the head of the District administration including the Civil Supply branch, the Collector also exercises the powers as a District Magistrate and with the assistance of the District Superintendent of Police and other officers of the administration, he will be in a position to assess the situation on month to month, if not on week to week basis. He would also be in a position to bring about an amicable settlement between different factions of the village. The factual scenario in a given case may require hammering out a solution in such situations on trial and error basis. In a petition under Article 226, the Court would not be in a position to sit in appeal over the decision of the administration in such matters. Therefore, it would be in the fitness of things if the

Collector, Bhavnagar District looks into the matter and tries to resolve the problem amicably more particularly because the petitioner on the one and and the large number of people in the village belong to different communities. It goes without saying that the petitioner is also expected to render all possible cooperation to the administration in resolving this problem. A little give and take on the part of the petitioner would also go a long way in assisting the Collector and Mamlatdar to resolve the problem amicably.

7. The petition is accordingly disposed in the aforesaid terms with liberty to the petitioner to file an appeal or make a representation to the Collector, Bhavnagar.

Rule is discharged with no order as to costs.

June 17, 2000 (M.S. Shah, J.)
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